



Building Near Metrolinx Corridors - Required Development Agreements

Date Issued: August 11th, 2023

Effective Date: September 1st, 2023

Author: Third Party Project Review, Metrolinx

Metrolinx agreements may be required, depending on your development project parameters, to specify technical requirements, roles, and responsibilities. Agreements may be required, for example, to address general Adjacent Development matters, Crane Swing activity, and/or Shoring/Tieback installations. Applicability and content will vary depending on the nature of the development activity in question.

Metrolinx has recently conducted a review of development agreement template content, including fees, in an effort to address concerns expressed by the development community, clarify uncertainties, and modernize approaches. Updated information regarding key aspects of the agreements is set out below - with terms and conditions effective September 1st, 2023.

Metrolinx staff will assist with document preparation, and this process can begin at any time during the planning process - although it should be noted that these agreements must make reference to final project plans and, as such, finalization of the documents usually occurs in the latter stages of planning approvals.

Metrolinx Legal typically requires six (6) weeks for review of the final document, although this may vary depending on the complexity of the issues contemplated. Revisions to the Metrolinx template documents are discouraged to expedite the review process.

1. Adjacent Development Agreement

Scope: Stipulates requirements/roles/responsibilities applicable to development adjacent to Metrolinx corridors throughout the lifetime of the project (from construction start to ongoing building occupation).

Key Considerations: Identification and commitment to construct/maintain applicable safety, corridor security and impact mitigation measures required for the development. Easement for Operational Emissions, to be registered on title.

Fee: \$3,500 administration fee

2. Crane Swing Agreement

Scope: Identifies roles and responsibilities with respect to the installation and use of a construction crane that swings within Metrolinx airspace.

Key Considerations: No loads are permitted to swing through Metrolinx airspace above active corridors without additional protective measures.

Fee: \$50,000 licensing fee covering a three-year (or less) term per crane or as determined by Metrolinx. Should crane operations continue beyond three years, the proponent shall be required



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to enter into a new and then-current Crane Swing Agreement and shall satisfy all applicable terms and conditions, including payment of requisite fees, applicable at the time of execution.

Insurance Requirements:

Project specific Commercial General Liability or Wrap-up Liability Insurance policy in a form satisfactory to Metrolinx in an amount not less than ONE HUNDRED MILLION DOLLARS (\$100,000,000.00) for rail corridor airspace encroachment or FIFTY MILLION DOLLARS (\$50,000,000) for non-rail corridor airspace encroachment per occurrence for personal injury, death or property damage, owner's and contractor's protective coverage, products and completed operations, and employer's liability including contingent employer's liability with coverage including the operations and activities of Developer, its Agents and contractors and having Metrolinx, AECOM Canada Ltd. or such other engineering consultant retained by Metrolinx from time to time and TTR as additional insureds but only with respect to liability arising out of the operations of Developer, with the usual provisions for cross-liability and severability of interest and including coverage for personal injury liability, bodily injury liability, blanket contractual liability, death and damage to property, including loss of use thereof (and including business interruption coverage) and pollution exclusion with limited time element exception. Such insurance shall not contain any exclusion for operations near, on or over a railway corridor.

- A. Standard owner's form Automobile Liability Insurance providing third party liability insurance with FIVE MILLION DOLLARS (\$5,000,000.00) inclusive limits of coverage, and accident benefits insurance, covering all licensed vehicles owned, leased, or borrowed by the Developer and used on Metrolinx's Lands by the Developer or any of its Agents.
- B. Contractor's Equipment Insurance shall be maintained for all equipment accessing Metrolinx's Lands or the adjacent rail corridor.

Note: Use of an alternate crane configuration (e.g., luffer crane) may prevent Metrolinx airspace encroachment and hence avoid the Crane Swing Agreement requirement.

3. Shoring System and Permission to Enter Agreement

Scope: Identifies roles and responsibilities with respect to the installation, monitoring, and de-commissioning of development shoring and tiebacks.

Key Considerations: Tiebacks extending under the Metrolinx corridor must be de-stressed at the completion of the shoring work by way of a Certificate of Completion from a licensed engineer.

Fees: \$50,000 licensing fee covering a three-year (or less) term. Should shoring activity continue beyond three years, the proponent shall be required to enter into a new and then-current Shoring Agreement and shall satisfy all applicable terms and conditions, including payment of requisite fees, applicable at the time of execution.



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Tieback Encumbrance Fee: The fee will be calculated based on the number of tiebacks proposed.

- Development Projects consisting of 20 or less tiebacks will be charged at a rate of \$2,500 per tieback.
- Development Projects consisting of greater than 20 tiebacks will be charged at a rate of \$3,000 per tieback. For clarity, it should be noted that the \$3,000 rate will apply to ALL tiebacks including the first 20 tiebacks.

\$500,000 security deposit to be posted via Letter of Credit-to be returned upon confirmation of successful shoring project completion/no impact to Metrolinx property.

Insurance Requirements:

Project specific Commercial General Liability or Wrap-up Liability Insurance policy in a form satisfactory to Metrolinx in an amount not less than FIFTY MILLION DOLLARS (\$50,000,000.00) per occurrence for bodily injury and death, personal injury, property damage including loss of use thereof (and including business interruption coverage), cross-liability and severability of interest clauses of standard wording, pollution exclusion with limited time element exception, blanket contractual liability, owners and contractor's protective coverage, completed operations and products liability, employers liability including contingent employers liability with coverage including the operations and activities of the Developer and its Authorized Users. In addition, liability coverage for completed operations hazards shall be provided from the date of substantial performance of the Shoring System on an ongoing basis for a period of two (2) years following the substantial performance of the Shoring System. Such insurance shall not contain any XCU exclusion or a 'damage to existing structure exclusion' or exclusion for operations near or on a railway corridor. The commercial general liability or wrap-up liability policy shall include Metrolinx as additional insured and contain an endorsement that the insurer will provide 30 days advance notice in writing to Metrolinx in the event that such policy is cancelled.

- A. Automobile Liability Insurance in an amount not less than FIVE MILLION DOLLARS (\$5,000,000.00) per occurrence shall be maintained for all vehicles owned, rented, leased or borrowed by the Developer and its Authorized Users.
- B. Pollution Liability Insurance with a limit of liability of not less than TEN MILLION DOLLARS (\$10,000,000) per pollution condition and in the aggregate, including 24 months completed operations coverage, against claims for on-site clean-up of new pollutant conditions, third party claims for on-site bodily injury and property damage, and off-site clean up caused by a pollution or contamination incident resulting from covered operations. Emergency remediation expense limit of five hundred thousand (\$500,000) per pollution condition and in the aggregate.
- C. Contractor's Equipment Insurance for all equipment accessing the Metrolinx Lands or the Rail Corridor.



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Note: Use of an alternate shoring approach (e.g., rakers) may prevent Metrolinx property encroachment and hence avoid the Shoring Agreement requirement.

4. All Agreements:

In addition to the above, Metrolinx will be reimbursed for costs incurred in connection with the external legal reviews, technical reviews, facilitating construction work, reviewing plans, and protecting Metrolinx property and operations.

***NOTE:** The information set out in this document including fees may be updated from time to time. Please refer to the most recent issued version.